

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

August 3, 2021

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket No. WEST 2021-0107
v.	:	A.C. No. 45-01923-521040
	:	
DELHUR INDUSTRIES, INC.	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

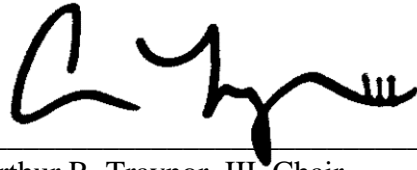
This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On January 27, 2021, the Commission received from DelHur Industries, Inc. (“DelHur”) a motion seeking to reopen a penalty assessment that had appeared to become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On September 2, 2020, the Secretary sent a proposed penalty assessment to DelHur. On November 5, 2020, the proposed assessment was deemed a final order of the Commission, when it appeared that the operator had not filed a Notice of Contest within 30 days.

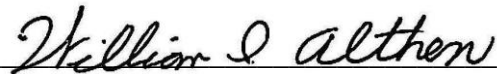
DelHur asserts that it never received the Secretary’s proposed assessment. DelHur maintains that it only learned of the assessment upon receiving a delinquency letter from the Secretary on January 8, 2021 and then promptly filed a motion to reopen. The Secretary does not oppose the request to reopen, and notes that Postal Service informed the Secretary on November 10, 2020, that the document was “Unclaimed/Being Returned to Sender.” Both parties also agree that an overpayment from an unrelated civil penalty was applied to the citations at issue here. DelHur requests to be refunded for these overpayments while it contests the civil penalties before the Commission.

Having reviewed DelHur’s request and the Secretary’s response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator never received the proposed assessment. Section 105(a) states that if an operator “If, **within 30 days from the receipt of the notification issued by the Secretary**, the operator fails to notify the Secretary that he intends to contest the citation or the proposed assessment of penalty. . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission. . . .” 30 U.S.C. § 815(a) (emphasis added). Here, it is uncontroverted that

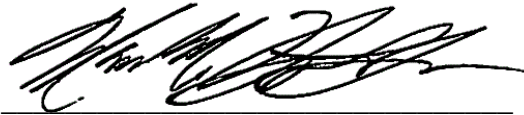
DelHur never received the original proposed penalty assessment and thus the 30-day requirement to file the contest only began once the DelHur received the Secretary's delinquency letter. In filing the motion to reopen, DelHur contested the penalties within 30 days in accordance with section 105(a). This obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot, the motion to reopen is deemed a timely filed contest of the penalties in the above-captioned case, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700. Any overpayment applied to the contested penalties should be refunded to the operator or applied to any outstanding penalties that are final orders of the Commission.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

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